

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JACK L. VANDERBURG,

Plaintiff,

V.

ALPHA PROPERTY & CASUALTY INSURANCE COMPANY.

Defendant.

NO: CV-13-5090-RMP

ORDER DENYING PLAINTIFF'S MOTION TO REMAND

BEFORE THE COURT is Plaintiff's Motion to Remand, ECF No. 5.

Plaintiff is represented by Timothy W. Mahoney. Defendant Alpha Property & Casualty Insurance Company (“Alpha Property”) is represented by Daniel E. Thenell and Julian M. Hinman. The motion was heard without oral argument.

The Court has considered the briefing and the file and is fully informed.

BACKGROUND

According to the allegations of the Complaint, Plaintiff Jack L. Vanderburg owned a 2011 Jeep Grand Cherokee that was insured in the amount of \$25,000 by Defendant Alpha Property. Plaintiff's Jeep Grand Cherokee was allegedly stolen

1 on April 25, 2012, in Kennewick, Washington, and subsequently disposed of in the
2 Columbia River. Plaintiff alleges that his vehicle was determined to be a total loss
3 with a value in excess of \$25,000. Plaintiff also alleges that Alpha Property acted
4 in bad faith in denying Plaintiff's insurance claim relating to the theft and loss of
5 his vehicle.

6 Plaintiff filed suit in Benton County Superior Court on July 23, 2013,
7 alleging that Alpha Property violated the Insurance Fair Conduct Act, chapter
8 48.30 RCW, and provisions of the Washington Administrative Code, in denying
9 his claim. Plaintiff requested an award for the loss of his vehicle under his Alpha
10 Property insurance coverage, for special and general damages to be proven at the
11 time of trial, and for treble damages and reasonable attorney's fees as provided for
12 under the Insurance Fair Conduct Act. ECF No. 1-1.

13 Alpha Property filed a notice of removal in this Court on August 14, 2013.
14 Alpha Property asserts that the Court has subject matter jurisdiction under 28
15 U.S.C. § 1332 because complete diversity exists between the parties and the
16 amount in controversy exceeds \$75,000. Alpha Property is incorporated in the
17 State of Wisconsin with its principal place of business in Texas. Plaintiff is a
18 Washington resident. ECF No. 1.

19 Following Alpha Property's notice of removal, Plaintiff filed a motion to
20 remand the proceedings to state court. Plaintiff claims that removal was improper

1 because Alpha Property has not demonstrated that the amount in controversy
2 exceeds \$75,000.

3 ANALYSIS

4 28 U.S.C. § 1441 allows for removing an action filed in state court to federal
5 district court where the federal district court has original jurisdiction. 28 U.S.C. §
6 1332 in turn provides for original jurisdiction over civil actions where the amount
7 in controversy exceeds \$75,000 and there exists complete diversity between the
8 parties. The amount in controversy includes punitive damages and attorney's fees
9 authorized by statute. *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir.
10 2005); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001).

11 The party seeking to remove a case from state court has the burden of
12 proving that removal is proper. *See Gaus v. Miles*, 980 F.2d 564, 567 (9th Cir.
13 1992). The removal statute is strictly construed and there exists a “strong
14 presumption against removal jurisdiction.” *Id.* at 566.

15 In determining the amount in controversy at removal, the district court
16 should first determine whether it is “facially apparent” from the complaint that the
17 jurisdictional amount is met. *See Singer v. State Farm Mut. Auto. Ins. Co.*, 116
18 F.3d 373, 377 (9th Cir. 1997) (citing *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326,
19 1335-36 (9th Cir. 1995)). When it is not facially evident from the complaint that
20 the amount in controversy exceeds \$75,000, the party removing the action to

1 federal court must demonstrate by a preponderance of the evidence that the amount
2 in controversy exceeds the jurisdictional threshold. *Matheson v. Progressive*
3 *Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (per curiam). The
4 removing party may rely on any facts presented in the removal petition as well as
5 any “summary-judgment-type evidence relevant to the amount in controversy at
6 the time of removal.” *Id.* (quoting *Singer*, 116 F.3d at 377). Conclusory
7 allegations as to the amount in controversy are insufficient to meet this burden. *Id.*
8 (citing *Gaus v. Miles, Inc.*, 980 F.2d 564, 566-67 (9th Cir. 1992) (per curiam)).

9 Alpha Property asserts that it is facially apparent from the Complaint that the
10 jurisdictional amount in controversy has been met here. Plaintiff asserted in his
11 Complaint that he was damaged in the amount of \$25,000 and that he is entitled to
12 treble damages under the Insurance Fair Conduct Act.¹ Plaintiff additionally
13 asserted that he is entitled to attorney’s fees under the Act. *See* RCW
14 48.30.015(1). According to Alpha Property, the Complaint thus establishes an
15 amount of at least \$75,000 in controversy, with the jurisdictional amount met if
16 Plaintiff’s attorney’s fees amount to at least one cent.

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18 ¹ RCW 48.30.015(2) states that if a violation of the IFCA is found, the superior
19 court may “increase the total award of damages to an amount not to exceed three
20 times the actual damages.”

1 Plaintiff asserts that the Complaint does not specifically state that the
2 amount in controversy exceeds \$75,000. Plaintiff additionally asserts that he will
3 request in state court that his case be submitted to arbitration under RCW 7.06.020,
4 which places a jurisdictional limit on his claim of \$50,000.

5 The Court concludes that it is facially apparent from Plaintiff's Complaint
6 that the jurisdictional amount in controversy has been met. Plaintiff has asserted
7 that he is entitled to treble damages on actual damages of \$25,000 and that he is
8 entitled to recover his attorney's fees in this action. Such allegations are sufficient
9 to establish that the amount in controversy exceeds \$75,000. In addition, while
10 Plaintiff has stated an intent to seek arbitration in state court, he has not stipulated
11 that his Complaint is in fact limited to the \$50,000 limit for arbitration under RCW
12 7.06.020. Thus Plaintiff's assertion that the jurisdictional amount in controversy
13 will not be met is not enough to defeat the amount in controversy stated from the
14 face of the Complaint.

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1 Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Motion to
2 Remand, **ECF No. 5**, is **DENIED**. The Case shall proceed in this Court pursuant
3 to the Jury Trial Scheduling Order.

4 The District Court Clerk is hereby directed to enter this Order and to provide
5 copies to counsel.

6 **DATED** this 2nd day of October, 2013.

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8 *s/ Rosanna Malouf Peterson*
9 ROSANNA MALOUF PETERSON
Chief United States District Court Judge